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HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S ATTENTION

Written statement^{*} submitted by the Centro de Derechos Humanos Miguel Agustín Pro Juárez, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 May 2009]

^{*} This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

In 2008, as the Mexican government continued to deploy tens of thousands of soldiers to carry out policing tasks throughout numerous states, Mexico's National Human Rights Commission received 1230 reports of human rights violations committed by soldiers, representing an increase of over 600% since the year 2006, when current Mexican President Felipe Calderón took office.

A key factor perpetuating these military human rights violations is the extremely high level of impunity for such abuses, due in part to the consistent use of military jurisdiction to investigate and prosecute cases of human rights violations committed by members of the armed forces. This use of military, as opposed to civil, jurisdiction serves to restrict the investigation of military human rights crimes, leaving such cases to be tried by judges who lack independence and impartiality.

Article 13 of the Mexican Constitution establishes that "military jurisdiction subsists for crimes and offenses against military discipline..." However, "military discipline" is defined by the army, in Article 57 of its Code of Military Justice, to include all crimes committed by members of the armed forces "while on duty or due to acts associated with this duty." This overly broad definition conflicts with Article 13 of the Constitution and with international human rights law, in particular the guarantees of due process enshrined in the ICCPR.

Numerous UN special mechanisms and treaty bodies have explained that Mexico's use of military jurisdiction in human rights cases is not permissible under international law. These include the Special Rapporteur on Torture, the UN Committee Against Torture, the Special Rapporteur on Violence against Women, the Special Rapporteur on the Rights of Indigenous Peoples, the Special Rapporteur on Extrajudicial Executions, the Special Rapporteur on the Independence of Judges and Lawyers, and the Working Group on Arbitrary Detention.¹

¹ *Report of the Special Rapporteur, Mr. Nigel Rodley*, E/CN.4/1998/38/Add.2, Jan. 14, 1998, para. 86 ("Military personnel appear to be immune from civilian justice and generally protected by military justice") and para. 88j ("Cases of serious crimes committed by military personnel against civilians [should] be subject to civilian justice"); Committee Against Torture, *Concluding Observations*, CAT/C/MEX/CO/4, Feb. 6, 2007, para. 14 ("The State party should ensure that cases involving violations of human rights... committed by military personnel against civilians, are always heard in civil courts, even when the violations are service-related"); Committee Against Torture, *Report on Mexico Produced by the Committee Under Article 20 of the Convention*, CAT/C/75, May 25, 2003, para. 220g ("The application of military law should be restricted only to offences of official misconduct and the necessary legal arrangements should be made to empower the civil courts to try offences against human rights"); *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk*, E/CN.4/2006/61/Add.4, Jan. 13, 2006, para. 69a(vi) ("Ensure... that all cases of violence against civilians committed by military personnel are investigated by civilian authorities, prosecuted by civilian authorities and adjudicated by independent and impartial civilian courts"); *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen*, E/CN.4/2004/80/Add.2, Dec. 23, 2003, para. 90 ("Any offence by a member of the military committed against a civilian should without exception be heard in the civil courts"); *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir*, E/CN.4/2000/3/Add.3, Nov. 25, 1999, para. 107f ("Initiate reforms aimed at ensuring that all persons accused of human rights violations, regardless of their profession, are tried in ordinary courts"); *Report of the Special Rapporteur on the independence of judges and lawyers, Dato'Param Kumaraswamy*, E/CN.4/2002/72/Add.1, Jan. 24, 2002, para. 192d ("With regard to the military and military courts: Crimes alleged to be committed by the military against civilians should be investigated by civilian authorities...") Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention on its Visit to Mexico*, E/CN.4/2003/8/Add.3, Dec. 17, 2002, para. 72f ("as the forced disappearances committed by the military in the past constitute serious human rights violations, they should be dealt with by the ordinary civil courts").

Center Prodh is currently defending a paradigmatic case before Mexico's Supreme Court that challenges the use of military jurisdiction to investigate and try human rights violations. The case arose from a legal appeal filed on behalf of one of four civilian victims arbitrarily executed by soldiers in the community of Santiago de Caballeros, Sinaloa state, in March 2008, a case documented by Center Prodh. The case challenges the use of military jurisdiction to investigate and prosecute the soldiers implicated in this grave human rights violation, arguing that Mexico's Code of Military Justice is unconstitutional and violates international human rights standards.

In the context of this case and of rising military human rights violations in the country, as well as the questions and recommendations that arose during Mexico's Universal Periodic Review in February 2009 (during which 7 states recommended that Mexico properly limit the use of military jurisdiction to exclude human rights crimes from its sphere of competence), this issue is currently receiving increased attention on the national level, making this a particularly vital time for involvement from United Nations Special Procedures.

In the framework of these commitments and Mexico's recent re-election to the Human Rights Council, Center Prodh:

1. Calls on the Mexican government to act to limit the use of military jurisdiction in line with international standards and obligations;
2. Calls on the international community to continue to express its concern on the issue;

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